

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2067 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----

CHAMPABEN WD/O AMBALAL GATULAL

Versus

BALKRISHNA CHUNILAL SHAH

-----

Appearance:

MR BP DALAL for Petitioners

MR RR VAKIL for Respondent No. 1

-----

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 02/03/96

ORAL JUDGEMENT

1. RULE. Mr. R.R. Vakil waives service of Rule on behalf of respondent No.1. Respondents No. 2 to 5 are ordered to be deleted as they are not necessary for the purpose of deciding present Civil Revision Application.

2. The original defendants No.2(A), 2(B) and 2(C) in Regular in Civil Suit No. 170 of 1982 have challenged the judgment and order passed by Civil Judge (J.D.) Umreth, below

Exhibit 209 and 212. Exhibit-209 was filed by the defendant for the purpose of seeking amendment to their written statement and in support thereof Exhibit-212 was filed. The respondent No.1 is the original plaintiff, who has sued the defendant No.1, 2(A) to 2(C) and 3, 4 and 5. The plaintiff has, inter alia, prayed for a decree of redemption of mortgage with possession from the original mortgagee deceased Shah Chimanlal Parshotamdas represented by his heirs 2(A) to 2(F). It is the case of the plaintiff that such mortgagee in possession has during the continuance of mortgage, leased out the suit premises to one Ambalal Gatulal and defendants No. 2(A) to 2(C) are the heirs of the said deceased Ambalal Gatulal.

3. On service of summons, deceased defendant No.2 Ambalal Gatulal filed written statement at Exhibit-28 and according to him he was the tenant of the rented portion of the shop since prior to the mortgage and that he has no knowledge about the mortgage transaction which took place on 29th July, 1966. He denied rest of the allegations made in the plaint. The Court thereafter proceeded to frame issues and the evidence of the plaintiff's side was recorded and by closure pursis, such evidence is closed. It is at this stage, the defendant No.2(A) to 2(C) moved the aforesaid application for amendment, inter alia contending that they being the tenants of the portion of suit shop, no decree for possession could be passed against them. Such application for amendment was resisted by the plaintiff and after hearing the parties, the trial court has rejected such amendment by judgment and order dated 13th October, 1995 mainly on the ground that the amendment was belatedly moved at a stage when the evidence of the plaintiff was over and that such amendment was not necessary and that the plea raised by amendment was simply a technical plea. It also found that if such an amendment is allowed, the plaintiff shall have to amend the plaint and that plaintiff shall have to give further deposition and therefore also amendment should not be allowed.

3. Being aggrieved by such order, the present Civil Revision Application is filed. The law on the subject of amendment under Order-6 Rule 17 of the Code of Civil Procedure is by this time well settled by the Apex Court in the case of PIRGONDA HONGONDA PATIL v. KALGONDA SHIDGONDA PATIL, reported in AIR 1957 SC 363. All amendments in the pleadings are ordinarily to be allowed if the same are necessary for the purpose to effectively adjudicating upon the issues that may arise between the parties during the proceeding of the suit. Ordinarily, delay in making such amendment is not always fatal if it is to be taken into consideration unless right of the other side is thereby adversely prejudiced. The Apex Court has even in cases where such right is prejudiced, allowed

amendment of the pleading at the late stage even at the stage before the Apex Court. In view of the aforesaid position of law, one fails to understand as to why the trial court refused to allow the amendment which according to the defendants was necessary for the purpose of enabling them to raise their plea of tenancy which they are seeking through their mortgagee.

4. Mr. B.P. Dalal, learned Counsel for the original defendants No. 2(A) to 2(C) has submitted before the Court that the said defendants do not want to cross-examine the plaintiff or any of his witnesses and that they would only lead their evidence on their own pleadings. In view of the aforesaid statement made before this Court, it is directed that the evidence of the plaintiff sought is not required to be re-opened or defendants are not required to be permitted to further cross-examine the plaintiffs and/or his witnesses and the trial court shall abide by such direction. In case, it becomes necessary for the plaintiff to amend the plaint in view of the amendment in the written statement, the plaintiff is permitted to file plaint containing necessary averments and seeking necessary relief. In the opinion of this Court, in fact, amendments or filing of fresh plaint is not necessary because relief of possession is sought against all the defendants.

5. In view of the aforesaid, this Civil Revision Application is required to be allowed and is allowed and the amendment of the written statement as prayed for is granted subject to the condition that since the amendment is moved at very late stage of the proceeding, defendants No. 2(A) to 2(C) shall pay the cost of Rs. 500/- (Rupees five hundred only) to the plaintiff. In view of the fact that the suit filed by the plaintiff is of the year 1982, the Civil Judge, (J.D.) Umreth, is directed to proceed further with the suit forthwith and to decide the same on or before 31st July, 1996. This direction shall have to be scrupulously complied with failing which action will be taken by this Court. Rule is made absolute with cost as quantified above.

-----